

1 **CHRISTENSEN JAMES & MARTIN**
2 KEVIN B. CHRISTENSEN, ESQ.
3 Nevada Bar No. 000175
4 DARYL E. MARTIN, ESQ.
5 Nevada Bar No. 006735
6 7440 W. Sahara Ave.
7 Las Vegas, NV 89117
8 (702) 255-1718
9 *Attorneys for Plaintiffs*

6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 Painters Joint Committee, through its designated
9 fiduciaries, John Smirk and Thomas Pfundstein;
10 IUPAT Industry Pension Fund; Employee Painters
11 Trust Health & Welfare Fund; Painters Vacation-
12 Holiday Savings Fund; Painters Apprentice
13 Training Trust Fund; Painters Industry Promotion
14 Fund; Painters JCIP Fund; Painters Organizing
15 Fund; and Painters Labor Management Contract
16 Fund,

13 Plaintiffs,

14 v.

15 Franklin Drywall, Inc., a Nevada corporation,
16 Defendant.

Case No. CV-S-09-0042-KJD-PAL

**EX PARTE APPLICATION
FOR ORDER SCHEDULING
JUDGMENT DEBTOR
EXAMINATION AND TO
PRODUCE DOCUMENTS**

18 COME NOW the Plaintiffs identified above (“Judgment Creditors”), by and through their
19 attorneys, Christensen James & Martin, and hereby move this Court, in light of the Judgment by
20 Confession (“Judgment”) entered by the Court in this case on or about January 29, 2010 against
21 Defendant Franklin Drywall, Inc. (“Judgment Debtor”), and pursuant to Rule 69 of the Federal Rules
22 of Civil Procedure, for its Order requiring:

- 23 1. That the Judgment Debtor appear before the Court to be sworn and appear at a
24 Judgment Debtor Examination immediately subsequent thereto at the offices of Judgment Creditors’
25 Counsel, Christensen James & Martin, 7440 W. Sahara Avenue, Las Vegas, Nevada 89117; and
26 2. That Judgment Debtor produce to Judgment Creditors’ Counsel, Christensen James
27 & Martin, c/o Daryl E. Martin, Esq., 7440 W. Sahara Avenue, Las Vegas, Nevada 89117, at least
28 one week prior to the Judgment Debtor Examination, so that Judgment Creditors’ Counsel may

1 effectively review and question the Judgment Debtor regarding the documents, all information and
2 documents identifying, related to, and/or comprising the following :

3 Any and all information and documentation identifying real property, vehicles, bank
4 deposits and all other assets that may be available for execution to satisfy the
5 Judgment entered by the Court, including information relating to financial accounts,
6 monies owed to Judgment Debtor by others, etc.

7 This Application is made and based upon the Points and Authorities, Affidavit of Counsel
8 and any Exhibits attached hereto.

9 DATED this 2nd day of February, 2010.

10 **CHRISTENSEN JAMES & MARTIN**

11 By: /s/ Daryl E. Martin
12 Daryl E. Martin, Esq.
13 Nevada Bar No. 6735
14 7440 W. Sahara Ave.
15 Las Vegas, NV 89117
16 *Attorneys for Plaintiffs*

17 **POINTS AND AUTHORITIES**

18 Rule 69 of the Federal Rules of Civil Procedure states “In aid of the judgment or execution
19 ...the judgment creditor ...may obtain discovery from any person—including the judgment debtor.”
20 On January 29, 2010 the Court entered a Judgment by Confession (Doc. #33) against Franklin
21 Drywall, Inc. Only the \$3,200.00 initial payment of the \$16,000.00 Judgment has been paid.
22 Judgment Debtor has defaulted under the terms of the Judgment. See the attached Declaration of
23 Counsel.

24 Judgment Creditors represent that the last known address of the Judgment Debtor is:

25 Franklin Drywall, Inc.
26 Attn: Philip J. Franklin .
27 5130 S. Valley View, #110
28 Las Vegas, NY 89118

A Judgment Debtor Examination is necessary to enable Judgment Creditors to discover any
and all real and personal property, vehicles, assets, accounts, etc. of the Judgment Debtor and facts
relating thereto, which may assist in potential executions to satisfy the Judgment. Judgment

1 Creditors additionally request production of relevant documents to enable Plaintiffs to pursue such
2 executions.

3 WHEREFORE, pursuant to FRCP 69, Judgment Creditors respectfully requests that this
4 Court issue its Order Scheduling a Judgment Debtor Examination to take place at the offices of
5 Judgment Creditors' Counsel and for the Production of Documents. A proposed order is attached
6 hereto.

7 DATED this 2nd day of February, 2010.

8 **CHRISTENSEN JAMES & MARTIN**

9 By: /s/ Daryl E. Martin
10 Daryl E. Martin, Esq.
11 Nevada Bar No. 6735
12 7440 W. Sahara Ave.
13 Las Vegas, NV 89117
14 *Attorneys for Plaintiffs*
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1 **CERTIFICATE OF SERVICE**

2 I am an employee of Christensen James & Martin. On the date of filing of the foregoing
3 papers with the Clerk of Court I caused a true and correct copy to be served in the following manner:

4 ☒ **ELECTRONIC SERVICE:** Pursuant to Local Rule LR 5-4 of the United States District
5 Court for the District of Nevada, the above-referenced document was electronically filed and served
6 on all appearing parties through the Notice of Electronic Filing automatically generated by the
7 Court.

8 ☒ **UNITED STATES MAIL:** By depositing a true and correct copy of the above-referenced
9 document into the United States Mail with prepaid first-class postage, return receipt requested,
10 addressed to the parties at their last-known mailing address(es):

11 Franklin Drywall, Inc.
12 Attn: Philip J. Franklin .
13 5130 S. Valley View, #110
14 Las Vegas, NY 89118

15 ☐ **OVERNIGHT COURIER:** By depositing a true and correct copy of the above-referenced
16 document for overnight delivery via a nationally-recognized courier, addressed to the parties listed
17 on the attached service list at their last-known mailing address.

18 ☒ **FACSIMILE:** By sending a true and correct copy of the above-referenced document, with
19 all exhibits and attachments, via facsimile, to Defendant Franklin Drywall, Inc. at the following fax
20 number: (702) 476-4776.

21 **CHRISTENSEN JAMES & MARTIN**

22 By: /s/ Daryl E. Martin

1 **CHRISTENSEN JAMES & MARTIN**
2 KEVIN B. CHRISTENSEN, ESQ.
3 Nevada Bar No. 000175
4 DARYL E. MARTIN, ESQ.
5 Nevada Bar No. 006735
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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 Painters Joint Committee, through its designated
9 fiduciaries, John Smirk and Thomas Pfundstein;
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Case No. CV-S-09-0042-KJD-PAL

**DECLARATION OF COUNSEL
IN SUPPORT OF EX PARTE
APPLICATION FOR ORDER
SCHEDULING JUDGMENT
DEBTOR EXAMINATION AND
PRODUCTION OF DOCUMENTS**

18 STATE OF NEVADA)
19 : ss.
20 COUNTY OF CLARK)

21 Daryl E. Martin, Esq., being first duly-sworn, and under penalty of perjury under the laws
22 of the United States of America, now deposes and says that:

23 1. I am one of the attorneys of record for the Plaintiffs/Judgment Creditors in Case No.
24 CV-S-09-0042-KJD-PAL, and I have personal knowledge and can testify as to the truth of the facts
25 hereinafter recited.

26 2. The Court entered Judgment by Confession ("Judgment") against the Judgment
27 Debtor and in favor of the Judgment Creditors on or about January 29, 2010 ("Judgment") in the
28 amount of \$16,000.00.

3. Prior to entry of the Judgment, Judgment Debtor paid the initial payment under the Judgment in the amount of \$3,200.00, but has since defaulted on subsequent payments, all of which were to be delivered to my office, but which have not been received.

4. The last address of the Judgment Debtor known to Plaintiffs is:

Franklin Drywall, Inc.
Attn: Philip J. Franklin .
5130 S. Valley View, #110
Las Vegas, NY 89118

5. A Judgment Debtor Examination is necessary to enable the Judgment Creditors to discover real and personal property, vehicles, assets, accounts, etc. of the Judgment Debtor and facts relating thereto, which may assist in potential executions to satisfy the Judgment. The production of relevant documents is necessary to enable Plaintiff to pursue such executions.

DATED this 2nd day of February, 2010.

By: /s/ Daryl E. Martin
Daryl E. Martin, Esq.

Proposed Order Follows

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1 **CHRISTENSEN JAMES & MARTIN**
2 KEVIN B. CHRISTENSEN, ESQ.
3 Nevada Bar No. 000175
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16 Franklin Drywall, Inc., a Nevada corporation,
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Case No. CV-S-09-0042-KJD-PAL

**ORDER SCHEDULING
JUDGMENT DEBTOR
EXAMINATION AND TO
PRODUCE DOCUMENTS**

19 Pursuant to the Ex Parte Application of the Judgment Creditors for issuance of this Court's
20 Order Scheduling Judgment Debtor Examination and Production of Documents, and Good Cause
21 Appearing therefor,
22

23 IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

24 1. A knowledgeable representative of Defendant Franklin Drywall, Inc. ("Judgment
25 Debtor"), shall personally appear before this Court on _____, 2010 at _____
26 _____.m. in Courtroom _____ and shall be sworn to tell the truth and give testimony at a
27 subsequent Judgment Debtor Examination.
28

1 2. Immediately after appearing before this Court on the date and time above stated, the
2 Judgment Debtor shall accompany Judgment Creditors' Counsel and shall give sworn testimony at
3 a Judgment Debtor Examination to be held the offices of Counsel for the Judgment Creditors,
4 Christensen James & Martin, located at 7440 W. Sahara Avenue, Las Vegas, NV 89117. Judgment
5 Debtor shall be examined with regard to the extent and location of Judgment Debtor's assets that
6 may be available to the Judgment Creditors for the purpose of satisfying the Judgment by
7 Confession entered by this Court on or about January 29, 2010.
8

9
10 3. At least one week prior to the above-scheduled Judgment Debtor Examination,
11 Judgment Debtor shall produce the following documents to Christensen James & Martin, c/o Daryl
12 E. Martin, Esq., 7440 W. Sahara Avenue, Las Vegas, Nevada 89117:

13 Any and all information and documentation identifying real property, vehicles, bank
14 deposits and all other assets of Franklin Drywall, Inc. that may be available for
15 execution to satisfy the Judgment entered by the Court, including information
16 relating to financial accounts, monies owed to Judgment Debtor by others, etc.
17

18 4. Judgment Creditors shall personally serve the Judgment Debtor with a copy of this
19 Order and shall provide proof of such service to the Court not less than five (5) days before the
20 Judgment Debtor Examination.
21

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5. Should Judgment Debtor fail or refuse to cause a knowledgeable representative to appear at the Judgment Debtor Examination herein scheduled, or to produce the documents referred to above, this Court may adjudicate Judgment Debtor guilty of civil contempt of its orders and may issue a warrant or seizure order to compel compliance with this Order.

DATED and DONE this _____ day of _____, _____.

UNITED STATES DISTRICT/MAGISTRATE JUDGE

Submitted by:
CHRISTENSEN JAMES & MARTIN

By: /s/ Daryl E. Martin
Daryl E. Martin, Esq.